

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER SHAUN WHITE,

Defendant-Appellant.

UNPUBLISHED

May 22, 2007

No. 268952

Wayne Circuit Court

LC No. 05-010113-01

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals by right his jury conviction of unarmed robbery, MCL 750.530.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant testified that she operated a clothing store and a laundry in Detroit. While she was going from her clothing store to the laundry, defendant confronted her. She ran inside the building as defendant grabbed her. Defendant held her from behind, and as he did so, she felt an object in her left side. She could not see what was pressing into her side. After she felt the object, she stopped trying to give her purse to one of her employees. Defendant took the purse and left the store.

After the close of proofs, defense counsel moved for a directed verdict on the ground that the prosecutor had presented insufficient evidence to support the armed robbery charge. The trial court denied defendant's motion. The trial court instructed the jury on the elements of both armed robbery and unarmed robbery. Subsequently, the jury requested that the trial court repeat the offense instructions, and allow them to review a portion of complainant's testimony. The trial court reread the offense instructions for both armed robbery and unarmed robbery. The jury was also presented with an audiotape of complainant's testimony, and the foreperson told the trial court that the jurors "have heard what we needed to hear."

Defendant maintains that the trial court improperly denied his motion for a directed verdict because the prosecutor presented insufficient evidence to show that defendant was armed during the robbery. Defendant maintains that he is entitled to a reversal of his conviction

¹ Defendant was initially charged with armed robbery, MCL 750.529.

because the improper presentation of this charge caused the jury to be confused. See *People v Graves*, 458 Mich 476, 486-488; 581 NW2d 229 (1998).

Even were we to find that the trial court improperly submitted the armed robbery charge to the jury,² defendant would not be entitled to relief. Defendant does not dispute that the charge of unarmed robbery was properly submitted to the jury. Accordingly, any error arising from the submission of the armed robbery charge to the jury was rendered harmless when the jury acquitted defendant of that charge. As our Supreme Court observed in *Graves, supra*:

[A] defendant has no room to complain when he is acquitted of a charge that is improperly submitted to the jury, as long as the defendant is actually convicted of a charge that was properly submitted to the jury. Such a result squares with respect for juries. Further, not to adopt this view is to countenance a misuse of judicial resources by automatically reversing an otherwise valid conviction. [*Graves, supra* at 486-487.]

Nor, contrary to defendant's contention, does the jury's requests for a second reading of the elements of the charged offenses, and to review a portion of complainant's testimony, necessarily show that the jury reached a compromised verdict because of "unresolved juror confusion". See *People v Moorer*, 246 Mich App 680, 683 n 1; 635 NW2d 47 (2001). The request and later statement by the jury foreperson indicates that the jury knew what it was looking for in complainant's testimony in order to reach its decision. The jurors' answers during the jury polling do not indicate any juror confusion.

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray

² But we don't. The elements of armed robbery are: (1) an assault, and (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a dangerous weapon or with an article used or fashioned in such a way as to lead a reasonable person to believe that it is a dangerous weapon. *People v Banks*, 454 Mich 469, 473; 563 NW2d 200 (1997); *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004). The prosecutor presented more than only complainant's subjective belief that defendant was armed to support its case. As defendant held complainant, she felt an object at her side. This caused her to stop resisting defendant. Using this testimony, the jury could conclude that defendant deliberately used an undisclosed object to make complainant stop resisting. When viewed in the light most favorable to the prosecution, the evidence was sufficient to allow a jury to reasonably conclude that defendant either possessed a dangerous weapon or used an object in such a manner that complainant could reasonably assume he was armed. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).